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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

MELISSA LEE and BRANDON
MULLEN-BAGBY, individually, and
as guardians of RUBY JANE LEE, a
minor,

Plaintiffs,

vs.

CARGILL MEAT SOLUTIONS
CORP., a Delaware corporation; and
JOHN DOES 1 through 3,

Defendants.

CASE NO.

COMPLAINT

(Personal Injury)

JURY DEMANDED

COME NOW the plaintiffs, MELISSA LEE and BRANDON MULLEN-BAGBY,
individually, and as guardians of RUBY JANE LEE, a minor, by and through their attorneys of
record, the MARLER CLARK law firm, and allege by their Complaint as follows:

PARTIES

1.1 The plaintiffs MELISSA LEE and BRANDON MULLEN-BAGBY are the
natural parents of the minor plaintiff RUBY JANE LEE, who is one year old. The plaintiffs

1 currently reside in Troutdale, Multnomah County, Oregon. At all times relevant to this action,
2 the plaintiffs resided in Troutdale, Multnomah County, Oregon, within the jurisdiction of this
3 Court.

4 1.2 The defendant CARGILL MEAT SOLUTIONS CORP. (hereinafter “Cargill”) is
5 a foreign corporation organized and existing under the laws of the State of Delaware, and
6 registered as a corporation in the State of Kansas. Also, Cargill’s corporate headquarters is
7 located in Wichita, Kansas. At all times relevant to this action, Cargill carried on in its ordinary
8 course of business the manufacture, distribution, and sale of ground turkey products to retail and
9 wholesale foodservice locations nationwide, including in the state of Oregon. At all times
10 relevant to the allegations contained in this complaint, defendant did reside and conduct business
11 in the State of Oregon, sufficient to subject it to the personal jurisdiction of this court.

12 1.3 The defendants JOHN DOES 1 through 3 (“John Does”) are persons or entities
13 whose true identities are presently unknown, but who may have manufactured or sold the ground
14 turkey product that was the proximate cause of plaintiffs’ injuries. Defendants John Does 1
15 through 3 will be properly identified upon discovery of their true identities.

16 **JURISDICTION AND VENUE**

17 2.1 This court is vested with jurisdiction of this action pursuant to 28 U.S.C.
18 §1332(a). The matter in controversy exceeds the sum or value of \$75,000.00, and is between
19 citizens of different states.

20 2.2 This court is vested with venue of this action pursuant to 28 U.S.C. §1391(a)(1)
21 and (2) because the defendant resides within this District, and because a substantial part of the
22 events or omissions giving rise to the claim occurred within the District.

1 **GENERAL ALLEGATIONS**

2 **The Outbreak**

3 3.1 On July 29, 2011, the U.S. Department of Agriculture's (USDA) Food Safety
4 Inspection Service (FSIS) announced that ground turkey contaminated with *Salmonella*
5 Heidelberg was the source of a *Salmonella* outbreak that at the time had sickened at least 78
6 people in 26 states, including a California resident who died.

7 3.2 As of August 11, 2011, a total of 107 persons infected with the outbreak strain of
8 *Salmonella* Heidelberg have been reported from 31 states between February 27 and August 9,
9 2011. The number of ill persons identified in each state is as follows: Alabama (1), Arkansas
10 (1), Arizona (3), California (6), Colorado (2), Georgia (2), Illinois (13), Indiana (1), Iowa (2),
11 Kansas (1), Kentucky (2), Louisiana (1), Massachusetts (3), Maryland (1), Michigan (12),
12 Minnesota (2), Mississippi (1), Missouri (4), Nebraska (2), Nevada (1), New York (2), North
13 Carolina (3), Ohio (10), Oklahoma (1), Oregon (1), Pennsylvania (5), South Dakota (3),
14 Tennessee (2), Texas (14), Utah (1), and Wisconsin (4).

15 3.3 On August 3, 2011, Cargill recalled 35,709,675 pounds of fresh and frozen
16 ground turkey products produced at the company's Springdale, Arkansas, facility from February
17 20, 2011, through August 2, 2011, due to possible contamination with *Salmonella* Heidelberg.

18 3.4 A government agency called NARMS (National Antimicrobial Resistance
19 Monitoring System), which tracks antibiotic-resistant pathogens, detected the outbreak strain of
20 *Salmonella* Heidelberg in retail ground turkey samples produced at Cargill's Springdale,
21 Arkansas facility on at least five (5) occasions between March 7 and June 27, 2011.

1 3.5 Further, *Salmonella* Heidelberg was also detected at Cargill's Springdale,
2 Arkansas plan—i.e. the plant where the contaminated turkey was produced that caused the
3 outbreak—on multiple occasions in 2010.

4 3.6 The *Salmonella* involved in the outbreak is an antibiotic-resistant strain of
5 *Salmonella* Heidelberg. As of August 5, 2011, investigators have collected antibiotic resistance
6 information on isolates from four samples of ground turkey collected at retail and from nine (9)
7 ill persons infected with the outbreak strain of *Salmonella* Heidelberg. The isolates from the
8 ground turkey samples are resistant to antibiotics including ampicillin, streptomycin,
9 tetracycline, and gentamicin. Antimicrobial resistance may increase the risk of hospitalization or
10 possible treatment failure in infected individuals.

11 3.7 The defendant Cargill has a history of recalls and association with food borne
12 illness outbreaks:

- 13 • 1993 - Cargill supplied meat to Northwest Sizzler restaurants that was implicated
14 in an outbreak of *E. coli* O157:H7 infection involving 39 confirmed and 54
15 probable cases. Public health investigators said the illnesses were the result of
16 cross-contamination between raw Cargill Tri-tips and salad bar ingredients.
- 17 • 2000 - Cargill provided meat to Sizzler restaurants linked to an outbreak of *E. coli*
18 O157:H7 illnesses that killed one person and sickened that 62.
- 19 • 2000 - Sliced turkey from a Cargill processing plant in Texas was found to be the
20 source of a multi-state outbreak of *Listeria monocytogenes*. The company
21 recalled 16 million pounds of turkey after reports of infection that eventually
22 included seven deaths and 29 illnesses. Eight (8) of the case patients were

pregnant and three miscarriages/stillbirths were attributed to the contaminated turkey.

- 2001 - Cargill ground beef patties tested positive for *E. coli* O157:H7 after a child from Georgia became ill. Three of the patties were purchased at Kroger and one from Sam's Club, but all of the ill children and the tested meat had genetically indistinguishable strains of *E. coli*. Emmpak recalled 254,000 pounds of potentially contaminated ground beef.
- 2002 - Antibiotic-resistant *Salmonella* Newport was found in ground beef from Emmpak, a Cargill subsidiary. The CDC reported one fatality, 47 illnesses and 12 hospitalizations linked to consumption of the ground beef. Emmpak recalled a record 2.8 million pounds of potentially contaminated ground beef.
- 2007 – After Minnesota health officials traced 46 *E. coli* O157:H7 illnesses to ground beef patties, Cargill Meat Solutions Corporation recalled 845,000 pounds of frozen ground beef patties from retail locations across the U.S.
- 2007 - Cargill recalled 1,084,384 pounds of ground beef after federal tests detected *E. coli* O157:H7 in the product. No illnesses were associated with this recall.
- 2008 - Beef cheek produced by Beef Packers, a Cargill subsidiary, tested positive for *E. coli* O157:H7, prompting a 1,560 pound recall. No illnesses were associated with this recall.
- 2009 - At least 40 cases of *Salmonella* Newport infection were linked to Beef Packers ground beef in the summer, sparking a summertime recall of 830,000

1 pounds of ground beef. Then, in December, more *Salmonella* illnesses tied to the
2 producer's meat led to a recall of 20,000 pounds of products. Both recalls
3 involved contamination with drug-resistant *Salmonella* bacteria.

- 4 • 2010 - Cargill Meat Solutions recalled 8,500 pounds of ground beef after reports
5 of illnesses caused by *E. coli* O26, a rare strain of the bacteria that produces the
6 same Shiga-like toxin as the more common *E. coli* O157:H7. The meat was
7 distributed by BJ's Wholesale Club.
- 8 • 2011 - Cargill Meat Solutions recalled 36 million pounds of ground turkey linked
9 to an outbreak of drug-resistant *Salmonella* Heidelberg. Current outbreak
10 numbers: one dead, 107 ill, 22 hospitalized.
- 11 • Since 1993, Cargill has been the source of contaminated meat implicated in at
12 least 10 major outbreaks, 10 deaths, three stillbirths and 366 illnesses.

13 **Ruby Jane Lee's Injuries**

14 3.8 In early June, 2011, Ruby, ten months old at the time, consumed *Salmonella*-
15 contaminated ground turkey as part of a spicy spaghetti and meat balls meal prepared by her
16 father, Brandon Mullen-Bagby. The contaminated ground turkey had been manufactured,
17 distributed and sold by defendants.

18 3.9 During the first week of June, Ruby developed diarrhea. Her diarrhea got worse,
19 requiring as many as 20 diaper changes in a day. On June 10, when Ruby's fever spiked to
20 102.5°, her mother, Melissa Lee, rushed Ruby to urgent care at Kaiser Sunnyside Medical Center
21 in Clackamas, Oregon. The doctors prescribed Tylenol.

3.10 Though the diarrhea persisted, Ruby's symptoms improved some over the next several days. Then, on June 14, Lee took Ruby to the family's pediatrician at Kaiser, who ordered blood tests. On June 15, the doctor called and told Lee to take Ruby to Doernbecher Children's Hospital immediately; that *Salmonella* Heidelberg bacteria she had ingested from the defendants' ground turkey product had gotten into her bloodstream, and she needed urgent care.

3.11 Ruby spent seven (7) days at Doernbecher Children's Hospital. She was discharged on June 21, 2011, and thereafter continued in her recovery at home.

3.12 Like the other confirmed cases in the outbreak, Ruby had been infected with *Salmonella* Heidelberg due to her consumption of the contaminated ground turkey product. As a result of Ruby's *Salmonella* induced illness, plaintiffs have suffered severe physical and emotional injuries, as well as substantial economic loss.

FIRST CLAIM FOR RELIEF

(Personal Injury - Strict Liability)

4.1 The plaintiffs adopt and incorporate by reference paragraphs 1.1 through 3.12 as though fully set forth herein.

4.2 At all times relevant to this action, the defendants were manufacturers and sellers of the *Salmonella*-contaminated ground turkey food product that caused the plaintiffs' injuries.

4.3 The *Salmonella*-contaminated ground turkey adulterated food product that the defendants manufactured, distributed, and sold was, at the time it left the control of each defendant, defective because it contained *Salmonella*, a potentially lethal pathogen, and was thus in a condition not contemplated by the ultimate consumer.

4.4 The defective condition of the *Salmonella*-contaminated ground turkey

1 adulterated food product that the defendants manufactured, distributed, and sold caused the food
2 product to be unreasonably dangerous because the product posed a risk beyond that which an
3 ordinary consumer would contemplate when purchasing the product.

4 4.5 The *Salmonella*-contaminated ground turkey adulterated food product that the
5 defendants manufactured, distributed, and sold was delivered to the plaintiffs without any change
6 in its defective condition. The adulterated food product that the defendants manufactured,
7 distributed, and sold was used in the manner expected and intended, and was consumed by the
8 plaintiff Ruby Jane Lee.

9 4.6 As a direct and proximate result of the defendants' manufacture, distribution and
10 sale of *Salmonella*-contaminated ground turkey, the plaintiff Ruby Jane Lee was infected with
11 *Salmonella*. As a further direct and proximate result of the defendants' *Salmonella*-contaminated
12 ground turkey food product, the plaintiffs have suffered severe and permanent injuries, as well as
13 economic loss.

14 **SECOND CLAIM FOR RELIEF**

15 (Breach of Warranty)

16 5.1 The plaintiffs adopt and incorporate by reference paragraphs 1.1 through 4.6 as
17 though fully set forth herein.

18 5.2 The defendants are liable to the plaintiffs for breaching express and implied
19 warranties that they made regarding the *Salmonella*-contaminated adulterated ground turkey food
20 product that caused the plaintiffs' injuries. These express and implied warranties included the
21 implied warranties of merchantability and/or fitness for a particular use. Specifically, the
22 defendants expressly warranted, through their sale of the ground turkey food product to the

1 public and by the statements and conduct of their employees and agents, that the ground turkey
2 food product they prepared and sold was fit for human consumption and not otherwise
3 adulterated or injurious to health.

4 5.3 The plaintiffs allege that the *Salmonella*-contaminated ground turkey food
5 product that caused the plaintiffs' injuries would not pass without exception in the trade, and that
6 the sale of that contaminated ground turkey food product was therefore in breach of the implied
7 warranty of merchantability.

8 5.4 The plaintiffs allege that the *Salmonella*-contaminated ground turkey food
9 product that caused the plaintiffs' injuries was not fit for the uses and purposes intended, *i.e.*
10 human consumption, and that the sale of that contaminated food product was therefore in breach
11 of the implied warranty of fitness for its intended use.

12 5.5 As a direct and proximate result of the defendants' breach of express and implied
13 warranties regarding the contaminated ground turkey food product, the plaintiff Ruby Jane
14 Leewas infected with *Salmonella* causing plaintiffs to suffer substantial economic damages. As
15 a further direct and proximate result of the defendants' breach of express and implied warranties,
16 the plaintiffs have suffered severe and permanent injuries, as well as economic loss.

17 **THIRD CLAIM FOR RELIEF**

18 (Personal Injury - Negligence)

19 6.1 The plaintiffs adopt and incorporate by reference paragraphs 1.1 through 5.5 as
20 though fully set forth herein.

21 6.2 The defendants owed to the plaintiffs a duty to use reasonable care in the
22 manufacture, distribution, and sale of their ground turkey food product, the observance of which

1 duty would have prevented or eliminated the risk that the defendants' food products would
2 become contaminated with *Salmonella* or any other dangerous pathogen. The defendants
3 breached this duty by failing to exercise reasonable care in the manufacture, distribution and sale
4 of the *Salmonella*-contaminated ground turkey food product.

5 6.3 The defendants had a duty to comply with all statutes, laws, regulations, or safety
6 codes pertaining to the manufacture, distribution, storage, and sale of their ground turkey food
7 product, but failed to do so. Defendants failed to comply with statutes, laws, regulations and
8 safety codes pertaining to the manufacture, distribution, storage and sale of ground turkey food
9 products, and were therefore negligent. The plaintiffs are among the class of persons designed to
10 be protected by these statutes, laws, regulations, safety codes or provision pertaining to the
11 manufacture, distribution, storage, and sale of similar food products.

12 6.4 The defendants had a duty to properly supervise, train, and monitor their
13 respective employees, and to ensure their respective employees' compliance with all applicable
14 statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage,
15 and sale of similar food products, but the defendants failed to do so. Defendants failed to
16 properly supervise, train, and monitor their respective employees, and to ensure their respective
17 employees' compliance with all applicable statutes, laws, regulations, or safety codes pertaining
18 to the manufacture, distribution, storage, and sale of their ground turkey food product, and were
19 therefore negligent.

20 6.5 The defendants had a duty to use ingredients, supplies, and other constituent
21 materials that were reasonably safe, wholesome, free of defects, from reliable sources, and that
22 otherwise complied with applicable federal, state, and local laws, ordinances, and regulations,

1 and that were clean, free from adulteration, and safe for human consumption, but the defendants
2 failed to do so. Defendants failed to use ingredients, supplies, and other constituent materials
3 that were reasonably safe, wholesome, free of defects, from reliable sources, and that otherwise
4 complied with applicable federal, state, and local laws, ordinances, and regulations, and that
5 were clean, free from adulteration, and safe for human consumption, in their manufacture,
6 distribution and sale of the ground turkey food product, and were therefore negligent.

7 6.6 As a direct and proximate result of the defendants' negligence, the plaintiff Ruby
8 Jane Lee was infected with *Salmonella* causing plaintiffs to suffer substantial economic
9 damages. As a further direct and proximate result of the defendants' negligence, the plaintiffs
10 have suffered severe and permanent injuries, as well as economic loss.

11 **FOURTH CLAIM FOR RELIEF**

12 (Personal Injury – Negligence Per Se)

13 7.1 The plaintiffs adopt and incorporate by reference paragraphs 1.1 through 6.6 as
14 though fully set forth herein.

15 7.2 The defendants had a duty to comply with all applicable state and federal
16 regulations intended to ensure the purity and safety of its ground turkey food product, including
17 the requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 *et seq.*), and the
18 Oregon adulterated food statutes (ORS. § 616.205 *et seq.*).

19 7.3 The defendants failed to comply with the provisions of the health and safety acts
20 identified above, by manufacturing, distributing and selling a ground turkey food product which
21 was contaminated with *Salmonella*, a deadly pathogen, and, as a result, were negligent *per se* in
22 their manufacture, distribution, and sale of an adulterated food product. The plaintiffs are among

1 the class of persons designed to be protected by these statutes, laws, regulations, safety codes or
2 provision pertaining to the manufacture, distribution, storage, and sale of similar food products.

3 7.4 As a direct and proximate result of the defendants' manufacture, distribution, and
4 sale of ground turkey food product adulterated with *Salmonella*, the plaintiff Ruby Jane Lee was
5 infected with *Salmonella* causing plaintiffs to suffer substantial economic damages. As a further
6 direct and proximate result of the defendants' manufacture, distribution, and sale of food
7 adulterated with *Salmonella*, the plaintiffs have suffered severe and permanent injuries, as well
8 as economic loss.

9 **DAMAGES**

10 7.1 The plaintiffs adopt and incorporate by reference paragraphs 1.1 through 7.4 as
11 though fully set forth herein.

12 7.2 The plaintiffs have suffered general and special, incidental and consequential
13 damages as the direct and proximate result of the acts and omissions of the defendants, which
14 damages shall be fully proven at the time of trial. These damages include, but are not limited to:
15 damages for general pain and suffering; damages for loss of enjoyment of life, both past and
16 future; medical and medically-related expenses, both past and future; travel and travel-related
17 expenses, past and future; emotional distress, and future emotional distress; pharmaceutical
18 expenses, past and future; related wage and lost earning capacity damages; and all other
19 ordinary, incidental and consequential damages as would be anticipated to arise under the
20 circumstances.

21 **JURY DEMAND**

22 The plaintiffs hereby demand a jury trial.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiffs pray for the following relief:

3 (1) That the court award plaintiffs judgment against defendants, in such sums as shall
4 be determined to fully and fairly compensate the respective plaintiffs for all general, special,
5 incidental and consequential damages incurred, or to be incurred, by these plaintiffs, as the direct
6 and proximate result of the acts and omissions of the defendants, in an amount to be proven at
7 trial;

8 (2) That the court award these plaintiffs their costs, disbursements and reasonable
9 attorneys' fees incurred;

10 (3) That the court award plaintiffs the opportunity to amend or modify the provisions
11 of this complaint as necessary or appropriate after additional or further discovery is completed in
12 this matter, and after all appropriate parties have been served; and

13 (4) That the court award such other and further relief as it deems necessary and
14 proper in the circumstances.

15 DATED this 15th day of August, 2011.

16 MARLER CLARK

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